

CHRISTIANITY AND THE IMPERIAL CULT: JEWISH AND ROMAN SACRED LAW SHARE A DIRECT COMMON ORIGIN

by

Andrew Simmonds

Christianity seems to have been modeled on, prefigured in, and anticipated by the Roman imperial cult. This seems embarrassing because Christianity is supposed to be based upon Jewish monotheism, while the Roman imperial cult, one might assume, was based upon its antithesis and opponent, Greco-Roman paganism. This article points out that the Roman imperial cult was a sibling of Judaism and Christianity, for the most part unrelated to Greek norms. Like Judaism and Christianity, Augustus' imperial cult descended historically from the Hittite-Assyrian treaty-covenant tradition.

How did Near Eastern law and custom reach Italian shores—by sea. Roman sacred law came from the Etruscans, who received it from the Near East via the Phoenicians and Carthaginians, and perhaps in some measure the Etruscans themselves came from the Near East. More importantly perhaps, the Etruscans and Romans flattered themselves that they came from the Near East and it loomed large in the *Aeneid*, the manifesto of Augustus' empire. Augustus and his Etruscan coterie used Etruscan sacred legal traditions to formulate Augustus' imperial cult.

We begin with a review of prior scholarship, proceeds to explain the origin and operation of these sacred legal forms, and ends with a discussion of Etruscan influence upon Augustus' imperial cult.

PRE-WAR: A TABOO SUBJECT

In the nineteenth century, it was widely remarked by scholars (such as Rudolf von Jhering) that early Roman law seemed to display a dualism of two different legal systems, one more religious and the other more secular, and they wondered whether this might have been due to a mixture of different sources, peoples, or races.¹ In 1902, Frank Granger, pointed out curious analogies between Roman and Semitic worship with (Etruscan) Caere the point of contact,² and in 1916, Granger urged that that anti-Semitism be put aside in addressing this issue.³ But, for the most part, scholars such as David Heinrich Muller (of Jewish extraction), who in 1903 suggested a common Semitic and Roman legal connection, saw their views “universally rejected, often in the strongest terms.”⁴ In Christian biblical scholarship, late Second Temple Judaism was widely regarded as degenerate, sterile,⁵ and legalistic.⁶ And, the Fascists and Nazi adopted Roman symbols and identity such as the salute and step (Mussolini’s *Romanita*). With the rise of Fascism in Italy the so-called autochthonous theory of Etruscan origins gained almost monopolistic ascendance among Etruscan scholars, and theories of Near East origins or influence

¹ Richard Wellington Husband, “Race Mixture in Early Rome,” *TAPA*, 40 (1909) 66–67, citing Jhering’s *Geist des römischen Rechts*, 1:310.

² Granger, “Wissowa on Roman Religion,” *Classical Review* 16:8 (1902): 430.

³ Idem, “The Jews among Greeks and Romans,” *Classical Review* 30:5/6 (1916): 171–72.

⁴ Raymond Westbrook, “The Nature and Origins of the Twelve Tables,” *Zeitschrift der Savigny-Stiftung für Rechtsgeschichte* 105 (1988): 78–79.

⁵ Quite to the contrary, the time of Hillel and Johanan ben Zakkai was a, perhaps the, high point.

⁶ Rudolf Bultmann, *Primitive Christianity in its Contemporary Setting* (trans. R. H. Fuller; London: James and Hudson, 1956 (1949)), 59–71 (*Judische Gesetzlichkeit*); James E. McNutt, “A Very Damning Truth: Walter Grundmann, Adolf Schlatter, and Susannah Heschel’s *The Aryan Jesus*,” *HTR* 105:3 (2012): 291–94; Anders Gerdmar, *Roots of Theological Anti-Semitism: German Biblical Interpretation and the Jews, from Herder and Semler to Kittel and Bultmann* (Leiden/Boston: Brill 2009), 385 & n. 67; Albert I. Baumgarten, “Marcel Simon’s ‘Versus Israel’ as a Contribution to Jewish History,” *HTR* 92:4 (1999): 467 n. 12 (“legalism” viewed as “the worst of all possible religious defects”); 470 (“a mania for sterile casuistry, and of pedantic formalism, for all of which the Talmud provides abundant evidence”); George Foot Moore, “Christian Writers on Judaism,” *HTR* 14:3 (1921): 252; Terry Pinkard, *Hegel: a Biography* (Cambridge: Cambridge University Press, 2000), 585 (Hegel believed that Judaism would and should have vanished from the world stage except for “tenacious unnecessary legalisms”).

became infected with political, ethnic, and racial prejudice militating against such result.⁷

Moreover, considerable attention was given (and continues to be given to this day) to claims that ancient Roman law and religion were of Indo-European, Aryan, or of “pure” “national” Roman origin,⁸ that preceded any outside (Etruscan) influence.⁹

Writing just before the war, Italian scholar Edoardo Volterra purported to demonstrate that the Roman and ancient Near Eastern legal systems were incompatible.¹⁰ And, in 1944, Boaz Cohen wrote, that the two systems of law, Jewish and Roman, apparently have no common origin, no common stock of legal ideas, and belong to people so distinct in mood and

⁷ Giovanna Bagnasco Gianni, “Massimo Pallottino’s ‘Origins’ in Perspective,” in *The Etruscan World* (ed. Jean MacIntoch Turfa; London/New York: Routledge, 2013), 29; Maurizio Sannibale, “Orientalizing Etruria,” *Ibid.*, 104–05; Jodi Magness, “A Near Eastern Ethnic Element among the Etruscan Elite?” *Etruscan Studies* 8:4 (2001): 79–98; Valeria Forte, “Archaeology and Nationalism: The Trojan Legend in Etruria,” dissertation University of Texas, Arlington (2008).

⁸ Stefan Arvidsson, “Aryan Mythology As Science and Ideology,” *JAAR* 67:2 (1999): 327–54; Bruce Lincoln, “Rewriting the German War God: George Dumézil, Politics and Scholarship in the Late 1930s,” *HR* 37:3 (1998): 187–208; Arnaldo Momigliano, *On Pagans, Jews, and Christians* (Middletown: Wesleyan University Press, 1987), 289–313; Westbrook, “Origins,” 78–79. Examples of Indo-European theories espoused by contemporary scholars include, Calvert Watkins, “Studies in Indo-European Legal Language, Institutions, and Mythology,” in *Idem, Selected Writings: Culture and Poetics* (2 vols.; ed. Lisi Oliver; Innsbruck: Innsbruck University, 1994), 2:429–35; *Idem*, “‘In the Interstices of Procedure’: Indo-European Legal Language and Comparative Law,” *Ibid.*, 2:718–27; Roger D. Woodward, *Indo-European Sacred Space: Vedic and Roman Cult* (Urbana/Chicago: University of Illinois Press, 2000), *passim*.

⁹ Herbert J. Rose, “Roman Religion,” *JRS* 50:1/2 (1960): 165–68. W. Warde Fowler, *The Religious Experience of the Roman People: From the Earliest Times to the Age of Augustus* (London: Macmillan, 1911), 307, 346–47, takes an extremely negative view of the Etruscan religious influence upon Roman religion describing it as “dangerous,” “perverse,” and “sinister,” noting a purported “rapid political and moral decay of Etruscan people.” Arnobius, *Ad. Gent.* 7.335, wrote that Etruria was “the mother and creator of superstitious practices.” A number of modern scholars have disliked Etruscan religious culture. Graeme Barker and Tom Rasmussen, *The Etruscans* (Malden: Blackwell Publishing, 2000), 92, 293.

¹⁰ Raymond Westbrook, “Origins,” 79. Nonetheless, since Volterra was Jewish, he had to leave Europe, not returning to Italy until the Allied invasion.

temperament, in political theories and institutions, in their social arrangements, and in their religious convictions as to have no interrelationship whatever.¹¹

Some scholars knew better, but they discreetly kept silent. For example, David Daube writing in 1939 regarding noxal surrender would only go so far as to say that his English mentor, Buckland, lacked interest in prehistoric Roman law and in estimating the roles played in Roman legal growth from Greek and oriental sources. Daube pointed out that noxal liability, so prominent in Roman law, did not exist under many Greek legal systems, but he said nothing about the very relevant similar Jewish and Near Eastern law of noxal surrender (the preeminently famous goring ox rule, for example).¹² (In 1975, Daube's student, Bernard Jackson, pointed out the apparent connections between noxal surrender in Jewish and Roman law.¹³)

POST-WAR SCHOLARSHIP

After the War, gradually, the topic became less of a taboo as a few scholars began reporting on the similarity between Roman and Near Eastern sacred legal forms and their difference from Greek forms. Thus, in 1946, studying the edict of Cyrus in Ezra 1, Elias J. Bickerman pointed out that Greek legal formulae used in proclamations were “completely different” from Cyrus' Persian formula, but remarkably, “Roman and Persian proclamations have the same formula.”¹⁴ Similarly, in 1952, Bickerman, pointed out that the legal formula of the treaty between Hannibal and Philip V of Macedonia, though written in Greek, was very

¹¹ Boaz Cohen, “The Relationship of Jewish to Roman Law,” *JQR*, New Series 34:3 (1944): 268, but cf. 273 (Edward Gibbon noted “some proofs of common descent from Egypt or Phoenicia”).

¹² David Daube, “Nocere and Noxa,” *Cambridge Law Journal* 7:1 (1939): 24–25, 51; John Crook, “Patria Potestas,” *CQ*, New Series 17:1 (1967): 113 (“no Athenian equivalent”).

¹³ Bernard S. Jackson, *Essays in Jewish and Comparative Legal History* (Leiden: E. J. Brill, 1975): 108–52, especially 135–36.

¹⁴ Elias J. Bickerman, “The Edit of Cyrus in Ezra 1,” *JBL* 65:5 (1946), 273–74.

different from the formulae used in Greek treaties.¹⁵ It was a very literal translation into Greek of an extremely ancient Punic legal formula that had existed in the Near East for 1000 years.¹⁶

In 1947, Daube pointed out that, while it was generally assumed at the time that *vestigii minatio* (hot pursuit of a thief) was a practice peculiar to Indo-European systems, it is amply found in Jewish law (and indeed is apparently universal).¹⁷ And, in 1950, Daube stated, “it is well known that a good many of those ancient Italic rites (true or legendary) had their roots in the orient.”¹⁸

How could Daube make such a bold statement and without citation?¹⁹ Interestingly, Dionysius of Halicarnassus in *Ant. Rom.* 2.49.3 wrote, “The arrival of Aeneas and the Trojans in Italy is attested by all the Romans and evidences are to be seen in the ceremonies observed by them in their sacrifices and festivals.” Thus, it seems that the Romans were perceived as performing rites derived from the Near East on account of their (the Romans and/or Etruscans) having come from the Near East.

However, Dionysius was the ancient champion of the autochthonous theory that the Etruscans were native to the Italian peninsula. Thus, how is it that Dionysius maintained that Roman rituals were of Near Eastern origin? Dionysius did not dispute the widely held Roman and Etruscan view that central Italy had been settled by peoples who traveled by ships from the Near East. Dionysius’ concern was to show that all that was good in Roman civilization came

¹⁵ Idem, “Hannibal’s Covenant,” *AJP* 73:1 (1952), 90–92, 96–97, 99, 101–02.

¹⁶ Ibid.

¹⁷ David Daube, “Summuum Ius—Summa Iniuria,” in *Biblical Law and Literature, Collected Works of David Daube* (5 vols.; ed. Calum Carmichael; Berkeley: Robbins Collection, 1992–2014), 3:249–51.

¹⁸ Idem, “*Consortium* in Roman and Hebrew Law,” *Collected Works*, 3:927.

¹⁹ Karl Galinsky, “Vergil’s *Aeneid* and Ovid’s *Metamorphoses* as World Literature,” *The Cambridge Companion to The Age of Augustus* (ed. Karl Galinsky; New York: Cambridge University Press, 2005), 347, without citation states, “Roman religion was a well-known amalgam of various traditions from around the Mediterranean.”

from Greeks, and since he believed that the Trojans were of Greek stock, it did not matter to him that Roman civilization displayed Near Eastern influence, just so long as it was of Greek origin. While Dionysius regarded the Trojans as Greeks, as respects the Etruscans, it was impossible for Dionysius to credit the Etruscans as being of Greek origin because the Etruscans, from their highly unusual language and traditionally hostility to Greek incursions in the Western Mediterranean, were certainly not Greeks.

Daube's student, Reuven Yaron, wrote a series of articles about facets of Roman law that seemed traceable to the Near East, but these were accompanied by elaborate disclaimers in which Yaron declined to ascribe the closeness to a connection, "not because it is in itself impossible or unlikely, but rather because there is no evidence;" "we cannot obtain definite results, but must be content with a fair degree of probability." It might just be a case of "similar notions in similar situations."²⁰

Only in 1974 did Yaron deal with the subject directly in an article entitled "Semitic Influence in Early Rome."²¹ Yaron pointed out that the treaty clause, You shall not add (*lo' tosif*) and you shall not detract (*lo' tigma*) found in Deuteronomy 4:2 (and 13:1) is equally found in the very early Roman treaty, the *foedus Cassianum* of 493 between Rome and the Latins, and that oriental interstate treaties were permanent, sacred, and immutable lacking the modification clause, the *Anderungsklaus*, found in Greek treaties.²² In the parallels between the exact language and the underlying concept of permanence, according to Yaron, Roman treaty practice reflected Near Eastern influence.

²⁰ Yaron, "Vita Necisque Potestas," *Tijdschrift voor Rechtsgeschiedenis* 30 (1962) 243–51, at 248; Idem, "Si Adorat Furto," Ibid. 34 (1966): 513 n. 15; Idem, "Minutiae on Roman Divorce," Ibid. 28 (1960): 1–12; Idem, "Semitisms in Ulpian?," Ibid. 55 (1987) 11.

²¹ In *Daube Noster* (ed. Alan Watson; Edinburgh and London: Scottish Academic Press, 1974), 347–51.

²² Yaron, "Semitic Influence," 347–51.

This is an immensely important distinction. Hittite-Assyrian, Roman, and Jewish treaty/covenants were sacred and immutable, lasting forever; Greek treaties/covenants were not.²³ The Greeks were notorious for lying, breaking promises,²⁴ and using sophistry to evade their agreements; Greek treaties even contained anti-deceit clauses (not found in oriental-style treaties) prohibiting (Greek-style) sophistic interpretation.²⁵ The Greeks had a “Merry Rogue” tradition in which, for example, Autolycus was admired for unsurpassed skill in “thieving and oaths;” Lysander “cheated boys with knuckle-bones, men with oaths.”²⁶ In Euripides’ notorious phrase, “My tongue did swear, my heart remains unsworn” (*Hipp.* 612). The Romans took a dim view of Greek legal process. Cicero, *Flac.* 4–5 says, “scrupulous regard to truth in giving their evidence is not a virtue that that nation has ever cultivated;” “men to whom an oath is a joke, evidence a plaything.”²⁷ The flaunting of treaty obligations by the Greeks should be contrasted with, for example, the treaty between Joshua and the Gibeonites, which was honored by the Jews even though the Gibeonites had procured it by their fraud.²⁸

In modern times, these dueling conceptions of treaties (Jewish and Roman versus Greek) became *pacta sunt servanda* (treaties and covenants are sacred, eternal bonds that should be

²³ David J. Bederman, *International Law in Antiquity* (Cambridge: Cambridge University Press, 2001), 69, (Greek forms had differing rituals, divergent ratification formulae), 155, 179–80, 193 (Greek treaty culture lacked the concept of perpetuity, immutability).

²⁴ Polybius, 6.56; *Aen.* 2.49 (“Beware of Greeks, even bearing gifts”); Titus 1:12; John M.G. Barclay, *Against Apion, A Translation and Commentary*, in *Flavius Josephus* (10 vols.; ed. Steve Mason; Boston: Brill, 2007), 31 & n. 171, Appendix 6, 365 (“full of lies and inventions”); Matthew Dillon, “By Gods, Tongues, and Dogs: The Use of Oaths in Aristophanic Comedy,” *GR*, 2nd Series 42:2 (1995) 141.

²⁵ Everett Wheeler, “Sophistic Interpretations and Greek Treaties,” *GRBS* 25:3 (1984): 253–74, especially 257 & n. 17; Idem., “Anti-Deceit Clauses in Greek Treaties: An Apologia,” in *Greek and Roman Military Studies* (ed. E. Dabrowa; Cracow, 2008), 57–83.

²⁶ Robert Parker, *Miasma: Pollution and Purification in Early Greek Religion* (Oxford: Clarendon Press, 1983), 186.

²⁷ Andrew Erskine, “Greek Gifts and Roman Suspicion,” *Classics Ireland* 4 (1997): 33–45.

²⁸ Josh 9:3–27; 2 Sam 21.1–14; *Sanh.* 35a1; *Yev.* 79a1–2; Jehoshua M. Grintz, “The Treaty of Joshua with the Gibeonites,” *JOAS* 86:2 (1966): 113–26.

kept) versus *ribus sic stantibus* (as things *presently* stand; changed circumstances vitiate prior obligations), which at its extreme holds that treaties are “like pie crust, meant to be broken.”²⁹ So great was the difference between Greek thought that lacked the concept of sacred, permanent, immutable treaties or covenants that *berit*, *foedus*, and *pactum* did not translate into *syntheke* (treaty or covenant), which is why we have the New Testament (*diathyke*) rather than the new covenant (*syntheke*).³⁰ Indeed, there are several instances (some of which are discussed below) in which Roman or Jewish terminology and concepts simply do not have the same meaning translated into Greek, things like *sacramentum* versus *mysterium*.³¹ But, remarkably, there is considerable correspondence between Jewish and Roman sacred legal culture. In other words, the Athens-Jerusalem divide must be taken seriously, but there is considerably less of a Rome-Jerusalem divide.

Although the idea was originally proposed by Victor Korosec in 1931,³² George Mendenhall in the 1950s was the first to widely publish the observation that the Jewish covenants with God were based upon, and in the form of, the Hittite and Assyrian suzerain-vassal treaties, with, essentially, the Jewish God substituted in place of the suzerain and the Jewish people in place of the vassal.³³ Of course, as originally proposed the idea was not so

²⁹ David J. Bederman, “The 1871 London Declaration, Rebus Sic Stantibus and a Primitivist View of the Law of Nations,” *American Journal of International Law* 82:1 (1988): 19 & n. 99.

³⁰ For a general discussion, see Bernard S. Jackson, “Why the Name *New Testament*?” *Meililah: Manchester Journal of Jewish Studies* (2012): 50–100.

³¹ Daniel G. Van Slyke, “The Changing Meanings of *Sacramentum*: Historical Sketches,” *Antiphon* 11:3 (2007): 250–51; Theodore B. Foster, “‘Mysterium’ and ‘Sacramentum’ in the Vulgate and Old Latin Versions,” *AJT* 19:3 (1915), 414; Andrew Erskine, “Greekness and Uniqueness: The Cult of the Senate in the Greek East,” *Phoenix*, 51:1 (1997): 31–34.

³² Moshe Weinfeld, “Covenant Making in Anatolia and Mesopotamia,” *JANES* 22 (1993): 135–39 n. 1.

³³ George E. Mendenhall, “Covenant Forms in Israelite Tradition,” *BA* 17 (1954): 49–76; Billie Jean Collins, *The Hittites and Their World* (Atlanta: SBL, 2007), 139; Jacob Lauinger, “The Neo-Assyrian *ade*: Treaty, Oath, or something Else?” *ZABR* 19 (2013): 99–115; Rene Lopez,

bold, only that the Jewish covenants with God followed the procedural steps and structure of the Hittite and Assyrian treaties. But, as students of the history of the law know, substance follows and grows out of procedure,³⁴ and hence many of the substantive clauses of the divine covenants follow and derive from the Hittite-Assyrian treaties and covenants. Also, at the time no one was suggesting that Jesus' new covenant was likewise based upon the Hittite-Assyrian treaty-covenants.

Mendenhall recognized that both the Jews and the Romans used the same ancient self-curse-oath formula, the "thus, and more" formula which Livy *Hist.* 1.1.24 recounts came from the Etruscans.³⁵ Ranging from very lengthy to not much more than a threatening gesture and hostile grunt, the person identifies himself and his children or family with an animal being sacrificed and recites the self-curse-oath formula that includes children. "Oh Jupiter, so strike the Roman people, as I shall this day strike this swine; and do thou strike them so much more, as thou art more able and powerful!" (Livy 1.1.24).

Moshe Weinfeld became the greatest exponent of the idea that the Jewish covenants with God derived from the Hittite-Assyrian treaties and covenants, particularly that the curses of the Deuteronomy covenant share a common literary parent with the curses of the Assyrian vassal treaty of Esarhaddon.³⁶ In 2005, based upon Peter Herrmann's *Der romanische Kaisereid*³⁷

"Israelite Covenants in the Light of Ancient Near Eastern Covenants," *CTS Journal* 9 (2003): 92–111. On differences between Assyrian and Hittite forms, Weinfeld, "Anatolia," 135–39. On Jewish forms modeled after Assyrian forms, Baruch A. Levine, "Assyrian Ideology and Israelite Monotheism," *Iraq* 67:1 (2005): 411–27.

³⁴ F. W. Maitland, *The Forms of Action at Common Law* (Cambridge: University Press, 1968), vii (quoting Henry Sumner Maine, *Early Law and Custom* (London: John Murray: 1890), 389.

³⁵ George E. Mendenhall, "Puppy and Lettuce in Northwest-Semitic Covenant Making," *BASOR* 133 (1954): 26, 29–30 (parallelism between Roman and Jewish ceremony and formula of curses); Paul Sanders, *So May God Do To Me!*, *Biblica* 85 (2004), 91–98.

³⁶ Moshe Weinfeld, *Deuteronomy and the Deuteronomistic School* (Oxford: Clarendon, 1972), 116–29.

having been brought to his attention, Weinfeld reported that the Roman *Kaisereid* (the (literally) “Caesar oath” of the Roman imperial cult³⁸) was in the Hittite-Assyrian treaty-covenant form.³⁹ Weinfeld’s discovery brought the use of the form in history down to the time of Jesus and the evangelists making it clear that the covenant form was still in use when the Christian new covenant was formulated. This was important because the Jewish covenants were remarkably little discussed in Jewish sources around the time Christianity began (apparently because they conflicted with the Roman treaty-covenant tradition—in its *Philokaiser* ideology, that Caesar’s friends are my friends; Caesar’s enemies are my enemies).⁴⁰ Traditional treaty-covenant ideology was very intolerant of other treaty-covenant systems. Remarkably, in the historical record, the Roman *Kaisereid*, not contemporary Jewish sources, connects the Christian new covenant with the ancient Jewish and Hittite-Assyrian treaty-covenant tradition.

However, Weinfeld missed an important point discussed by Peter Herrmann, that the Western/Roman and Eastern/Greek *Kaisereid* formulae were different, and only the Western/Roman formula was in the Hittite/Assyrians/Jewish form. The Roman *Kaisereid*

³⁷ Gottingen: Vandenhoeck & Ruprecht, 1968.

³⁸ *Kaisereid* can mean the oath, or the covenant, or the stone on which it was transcribed.

³⁹ Moshe Weinfeld, *Normative and Sectarian Judaism in the Second Temple Period* (London and New York: T&T Clark, 2005), 2–44, especially 15, 29. See also Julian Gonzales, “The First Oath Pro Salvte Avgvsti Found in Baetica,” *ZPR* 72 (1988): 126; Angelos Chaniotis, “The Dynamics of Rituals in the Roman Empire,” in *Ritual Dynamics and Religious Change in the Roman Empire* (eds. Olivier Hekster, et al.; Leiden: Brill, 2009), 22 & n. 61.

⁴⁰ Philo, Josephus, and John avoid covenants. Philo, *Who is the Heir of Divine Things*, 38 (182); Idem, *On the Life of Moses*, 2, 29 (149)–30 (152); Louis H. Feldman, “Josephus’s Portrait of Moses,” *JQR*, New Series, 82:3/4 (1992), 285, 307, 320; Idem, “Josephus’ Portrait of Moses, Part Three,” *Ibid.* 83:3/4 (1993), 318–19 (covenant dear to anti-Roman revolutionaries); Paul Spilsbury, “God and Israel in Josephus: A Patron-Client Relationship,” in *Understanding Josephus*. Compared to other topics, the Jewish covenants are remarkably little discussed in the Talmud. The post-exilic Jewish idea/ideal of *hesed*, loving kindness and of proselytizing enemies was treasonous for the Romans who stuck to the old *Philokaiser* concept. The *Philokaiser* became a “dead letter” in rabbinic Judaism. *m. Yad.* 4.4; Jeremy Rosen, *Differing and Changing Attitudes in the Jewish Exegetical Tradition to the Fulfillment of the Biblical Land Covenant*, *BSOAS* 71:2 (2008): 193.

formula was *salus*, endorsing the health and physical wellbeing/safety of the ruler and his family, while the Greek formula was *eunoia*, love, affection, or well-disposed loyalty.⁴¹ A difference of *ti volgio bene* (from the Latin *bene velle*) versus *ti amo*. The Roman and Jewish oaths were acclamations, which were self-executing performative utterances that by themselves produced the result in the one acclaimed, even such things as a change in physical stature or “beauty.”⁴² The Greek *Kaisereid* formula of love, *eunoia*, was not a performative utterance because just saying someone is loved does not make it so (*religio anime*/intention is required).⁴³

The earliest acclamations attested throughout the ancient Near East were religious shouted in honor of a deity by his/her worshippers having an essential function in certain religious ritual ceremonies. And, the form was deeply established in Roman culture, such as, at triumphs (of Etruscan origin), *Io triumphe*, for example.⁴⁴

⁴¹ E. W. Gray, “*Der romische Kaisereid: Untersuchungen zu seiner Herkunft und Entwicklung*” by Peter Herrmann,” *Gnomon* 42:4 (1970): 390–96; Gonzalez, “*Salute*,” 117–18; John Briscoe, “The Imperial Oath of Allegiance,” *Classical Review*, New Series, 21:2 (1971), 263; Weinfeld, *Normative*, 5, 7, 31; Serena Connolly, “The Greek Oath in the Roman World,” in *Horkos: The Oath in Greek Society*, Alan H. Sommerstein and Judith Fletch, eds. (Bristol: Phoenix Press, 2007), 208 (Greeks used reciprocal oaths; the Roman *Kaisereid* was strictly one way).

⁴² Samuel Leiter, “Worthiness, Acclamation, and Appointment: Some Rabbinic Terms,” *PAAJR*, 41 (1973): 137–68; Seth L. Sanders, “Performative Utterances and Divine Language in Ugaritic,” *JNES*, 63:3 (2004): 161–81; A. Gelston, “King Yahweh,” *VT*, 16:4 (1966): 507–12 (title in original in Hebrew) (use of “long life” traditional to acclaim Israelite kings); Greg Rowe, *Princes and Political Culture: The New Tiberian Senatorial Decree* (Ann Arbor: University of Michigan Press, 2002), 136.

⁴³ Weinfeld, *Normative*, 5, 7, 31; Gonzalez, “*Pro Salute*,” 118; Connolly, “Oath,” 208.

⁴⁴ Charlotte Roueche, “Acclamations in the Later Roman Empire: New Evidence from Aphrodisias,” *JRS* 74 (1984): 181–99; Itamar Singer, *Hittite Prayers* (ed. Harry A. Hoffner, Jr.; Atlanta: Society of Biblical Literature, 2002), 21; Albert Henrichs, “‘Hieroi Logoi’ and ‘Hierai Bibloi’: The (Un)Written Margin of the Sacred in Ancient Greece,” *HCP* 101 (2003): 224. On the Roman tradition of public acclamations, see Fergus Millar, *The Crowd in the Late Republic* (Ann Arbor: University of Michigan Press, 1998).

Modern scholars have been surprised that the Roman covenantal oath formula bears an extraordinary resemblance to the original Hittite formula from more than 1000 years before.⁴⁵ Serena Connolly suggests the similarities between the Paphlagonian (in Anatolia on the Black Sea) *Kaisereid* and the Hittite form from the same area but more than a 1200 years earlier might be due to tenacious local customs. But, the same form is found in the Conobara *Kaisereid* in Spain and in the Aritium *Kaisereid* in Italy. In the case of the Paphlagonian *Kaisereid*, the form may have gone from the Near East to Italy and then back again.

As respects their similar extreme attention to detail, in 1976 John North pointed out that, “the legalism (of Roman religion) evokes the legalism of rabbinic Judaism,” and legalism represents “precisely what is least acceptable to a Christian critic,” yet “such issues should not be underestimated or written off as arid legalities.”⁴⁶ Also, Graeme Barker and Tom Rasmussen (2000) note the correspondence of Etruscan and Jewish minutia of observance.⁴⁷ Thus, for example, Roman and Jewish religion and law had similar extraordinarily detailed and cumbersome rules of priestly taboos.⁴⁸ From Etruscan influence, corpse pollution of priests was so strong that, “even the news of the death of a near relative incapacitated a magistrate as to his religious duties,” and as supreme pontiff, the emperor, “was not permitted even to look at a corpse,” and “when the emperor delivered a funeral oration, a curtain separated him from the

⁴⁵ Connolly, “Oath,” 209, 211–12; Alan H. Sommerstein, “Introduction,” in *Horkos*, 8; Weinfeld, *Normative*, 10; Christina M. Craige, “Review: International Legal Perspectives: Old and New: International Law in Antiquity by David Bederman,” *Yale Journal of International Law* 28 (2003): 290–93.

⁴⁶ North, “Conservatism and Change in Roman Religion,” *Papers of the British School at Rome* 44 (1976): 1–12, at 8, 11.

⁴⁷ Barker and Rasmussen, *Etruscans*, 92.

⁴⁸ Edna M. Hooker, “The Significance of Numa’s Religious Reforms,” *Numen*, 10:2 (1963): 119; Herbert J. Rose, *Religion in Greece and Rome* (New York: Harper & Row, 1959), 207–09; Valerie M. Warrior, *Roman Religion* (New York: Cambridge University Press, 2006), 43.

coffin.”⁴⁹ Like Jewish priests, Roman priests had to be unblemished and there were particular rules relating to their wives.⁵⁰

And so, we reach the present. Erica Simon writes that the Etruscan augurs, “used a practice that was more than one millennium old, coming to Rome from the late Hittite Court via Etruria.”⁵¹ Jean Turfa even speculates that prominent personages from the court of Assyrian king Ashurbanipal (668-626) may have visited Italy. Putting aside exactly why or how, it is increasingly recognized today that the Etruscans displayed an extraordinary amount of so-called “orientalizing” (that is, Near Eastern) influence.⁵²

CHILDREN

A classic feature that distinguishes the self-curse-oath acceptance clause in the Hittite-Assyrian treaty-covenant form is that the curse extended to “children.” *Neque me neque liberos meos eius salute cariones habebo* (Seut. Calig. 15), Nor will I hold myself or my children more dear than (the suzerain/commanding general).⁵³ “Neither wife nor son are dearer to me than my father and the State;” “my wife and children, whom, were it a question of your glory, I would

⁴⁹ Elias J. Bickerman, “*Diva Augusta Marciana*,” *AJP* 95:4 (1974) 363 & n. 363; Eli Edward Burris, “The Nature of Taboo and Its Survival in Roman Life,” *CP* 24:2 (1929): 156–57. Although corpse pollution existed among the Greeks, nothing comparable seems to have existed. F. P. Retief and L. Cilliers, “Burial Customs, the Afterlife and the Pollution of Death in Ancient Greece,” *AcT* 26:2 (2006): 48–50.

⁵⁰ George J. Szemler, “Religio, Priesthoods and Magistracies in the Roman Republic,” *Numen* 18:2 (1971): 115 & n. 94.

⁵¹ Erika Simon, “Gods in Harmony: The Etruscan Pantheon,” in *The Religion of the Etruscans* (eds. Nancy Thomson de Grummond and Erika Simon; Austin: University of Texas press, 2006), 47.

⁵² Jean MacIntosh Turfa, *Divining the Etruscan World: The Brontoscopic Calendar and Religious Practice* (New York: Cambridge University Press, 2012), 177, 205, 256, 264, 269–74.

⁵³ Van Slyke, ““*Sacramentum* in Ancient Non-Christian Authors,” *Antiphon* 9:2 (2005): 179; Idem, “The Changing Meanings of *sacramentum*: Historical Sketches,” *Ibid.* 11:3 (2007): 247–79; Diod. Sic. 37:11.

willingly expose to destruction.”⁵⁴ The concept was: “Better that I and my wife and children should perish, utterly! (thus, and more), than Rome (or the military commander) should perish.” “I bind myself, body, soul, and life, and my children and descendants (Paphlagonia); “ourselves and our descendants” (Palaipaphos);⁵⁵ “WE, ourselves and our Children, (SWEAR) (Cyprus)”⁵⁶ (this, of course, is legalistic as young children do not really swear oaths).

This form of self-curse-oath is the Roman *sacramentum*, which bound the soldier to follow orders no matter what.⁵⁷ (Observe that the words notwithstanding, Roman soldiers did not have wives and children until after their term of service.) The Greeks did not have the *sacramentum*; the Greeks had the different concept of *mysterium*.⁵⁸

The classic example in Christianity of this form of self-curse-oath including children is Matthew 27:25, “The entire people answered, ‘His blood on us and on our children.’”⁵⁹ Biblical commentators, not having focused closely on the legalistic formula, have pictured that the oath meant that children, even unborn children, will be punished for their ancestors’ wrongs. Post-Holocaust the curse-oath is still read erroneously, but now the supposed fault is just of a subset,

⁵⁴ D. Wardle, “An Allusion to the Kaisereid in Tacitus Annals 1.42?”, *CQ*, New Series 47:2 (1997), 609–13.

⁵⁵ Greg Rowe, *Princes and Political Culture: The New Tiberian Senatorial Decree* (Ann Arbor: University of Michigan Press, 2002), 139.

⁵⁶ T. B. Mitford, “A Cypriot Oath of Allegiance to Tiberius,” *JRS* 50:1/2 (1960): 75–79.

⁵⁷ Van Slyke, “Authors,” 199 (“curse upon self and kin”). Mommsen interpreted the *sacramentum* as belonging to Indo-European heritage. Arnaldo Momigliano, “Il ‘Sacramentum Militiae’ nell’Ambiente Culturale Romano-Italico by Salvatore Tondo,” *JRS* 57:1/2 (1967): 253–54. A number of theories have been suggested that maintained the *sacramentum*’s supposed Romano-centric character—that it was a *Clientela* oath, a *Burgereid*, or a *Treueid*. Gray, “*Kaisereid*,” 390–96. In the Roman military *sacramentum*, the term of duration was not specified, and although it terminated when the soldier was released from service, during the time of service it was sacred with perpetual/eternal implications. J. Linderski, “Aphrodisias and the Res Gestae: The Genera Militiae and the Status of Octavian,” *JRS* 74 (1984): 74–80.

⁵⁸ Van Slyke, “Authors;” Foster, “‘Mysterium.’”

⁵⁹ On recent scholarship, see Andre LaCocque, *Jesus the Central Jew: His Times and His People* (Atlanta: SBL Press, 2015), 227–35.

usually, almost ubiquitously, the so-called “Jewish leaders” (even though historically the “leaders” at the time were in disrepute among the populace). Commentators have thought (perhaps without realizing it) that the oath is delictual, and not considered the differences between delict and contract. (Delict, comprised of crime, tort, and insult is usually based upon fault/wrong; contract upon an offer and acceptance.) But, the covenant formula was/is contractual, not delictual, a “legalistic,” though crucial distinction, vital to understand the meaning.

To illustrate the difference between delict and contract. Assume that after the priest has thrown/poured the sacrificial blood,⁶⁰ but before it has landed, the priest’s hand is cut/falls off. Is the sacrifice valid? Under principles of delict, because the hand was cut off *after* the blood left the bowl, the cutting off of the priest’s hand had no causal effect on the blood’s landing (the principle of shoot an arrow, light a fire, responsibility for consequences of actions set in motion). But, under contract, the offer is judged at the precise moment of acceptance (landing), at which time the priest’s hand is missing. Because sacrifices are contracts, not delicts, the sacrifice is invalid and not accepted.⁶¹

The term “children” in the covenant self-curse-oath of acceptance meant “in perpetuity,” that the covenant is sacred, permanent, and immutable, not that children are to be punished for matters in which they played no part. One may ask, why did the ancients not simply say “in perpetuity” rather than use the term “children.” It is because ancient languages were very

⁶⁰ The landing of the blood on its target in Jewish sacred law was the acceptance, *zerikah*, the most important ritual event (compare Ex 24:8, the making of the Mosaic covenant by Moses throwing/ putting the blood of the covenant on the people/*laos* LXX).

⁶¹ *Zebah*. 15a3.

physical and had not developed abstract concepts and terms,⁶² which were pioneered by the Greeks. Another very ancient way of saying “in perpetuity” was “by the lives of the gods.”⁶³

Finally, one might ask why the treaty-covenant acceptance was so extremely negative, wishing that oneself and one’s descendants perish utterly!⁶⁴ It was for legal certainty. The covenant curse-oath was not conditional upon breach, not about punishment, but binding—the sacred commitment undertaken and its fulfillment.⁶⁵

DIFFUSION

The ancient Near East was the cradle of legal culture that spread throughout the Mediterranean world.⁶⁶ But, this culture took hold in some locations while not in others. Among the Greeks and Egyptians the covenantal self-curse-oath formula including children did

⁶² An ancient physical idiom, such as, “David spoke to his heart” in modern parlance would be “David thought to himself.” The classic example is found in ancient boundary stone donative contracts (*kudurru*s, ancestors of the treaty-covenant form) a smiling, radiant, joyful, happy face and gaze by the donor meant the gift was “irrevocable.” Yochanan Muffs, *Love and Joy: Law, Language and Religion in Ancient Israel* (New York/Jerusalem: Jewish Theological Seminary of America, 1992), 121–39. As in the Near East, sacred boundary stones had an outsized importance in Etruscan culture. Witness, for example, Terminus’ refusal to move, even for Jove; the prophecy of Vegoia; at the end of the Aeneid, Diomedes-like, Turnus lifts a great stone to hurl at Aeneas, but in sacrilege for it was a boundary stone; Claudius’ *pomerium* stones. S. J. Huskey, “Turnus and Terminus in ‘Aeneid’ 12,” *Mnemosyne*, Fourth Series 52:1 (1999): 77–82.

⁶³ Michael L. Barre, “Treaties in the ANE,” *ABD*, 6:654.

⁶⁴ Douglas Stuart, “Curse,” *ABD*, 1:1218–19 (“close relationship between covenant and curse led to metonymic use of “curse” for “covenant”); Moshe Weinfeld, “Covenant,” *EncyJud*, 5:1012–22 (In Hebrew, Hittite and in Akkadian the terms for covenant and curse often appear together as hendiadys for a binding oath).

⁶⁵ Cicero, *De Off.* 3.29.104; Livy 1.21.1.

⁶⁶ Westbrook, “Origins;” Moshe Weinfeld, “Covenant Terminology in the Ancient Near East and its Influence on the West,” *JAOS* (1973): 190 (there is “no escape from the conclusion that the Middle East was the cradle of covenant formalities in the ancient world”); Jacob J. Rabinowitz, *Jewish Law: Its Influence on the Development of Legal Institutions* (New York, 1956) 1; Idem, “Manumission of Slaves in Roman and Oriental Law,” *JNES* 19:1 (1960) 42–45 (importance of formulae for tracing legal traditions).

not take hold and its use tapered off.⁶⁷ Or, the formula was used for other more mundane purposes.

The Jews and Romans, on the other hand, were uniquely “the two most legally minded peoples of antiquity” far outstripping their neighbors in the area of law.⁶⁸ And, like the Romans, the Etruscans were legally-oriented, combining law, religion, and ritual⁶⁹ and used (typically legalistic) repeated symmetries, rhythms, parallel clauses, and synonyms.⁷⁰

As for religion, the Jews were famous for their devotion to their unusual religion. And, the Etruscans, and the Romans taking after them, were considered the most religious of all

⁶⁷ Christopher A. Farone, “Molten Wax, Spilt Wine and Mutilated Animals: Sympathetic Magic in Near Eastern and Early Greek Oath Ceremonies, *JHS* 113 (1993): 60–80; Bederman, *International*, 69; Karl-Heinz Zeigler, “Conclusion and Publication of International Treaties in Antiquity,” *Israel Law Review* 29 (1995): 233, 242. Regarding Egyptian forms, see Weinfeld, “Anatolia,” 135; Scott N. Morschauser, “The End of the Sdf(g)-Tr(yt) Oath,” *Journal of the American Research Center in Egypt* 25 (1988): 93–103. The “children” feature is not found in the Athenian Ephebic military oath, for example, even though it is a sacred form. John Wilson Taylor, “The Athenian Ephebic Oath,” *CJ* 13:7 (1918), 499; P. Siewert, “The Ephebic Oath in Fifth-Century Athens,” *JHS* 97 (1977), 103 ff. But, the “children” feature is prominently found in the Hittite military oath. “Hittite Soldier’s Oath,” *ANET*, 353–54. On the other hand, it is found in the Treaty between Athens and Colophon, 427 B.C. (“utterly destroyed, both myself and my family for all time”);

⁶⁸ Boaz Cohen, *Jewish and Roman Law* (2 vols.; New York: Jewish Theological Seminary of America, 1966), 1:124; Lieb Moscovitz, “Legal Fictions in Rabbinic and Roman Law,” in *Rabbinic Law in its Roman and Near Eastern Context* (ed. Catherine Hezser; Tübingen: Mohr Siebeck, 2003), 131 (only the Romans and Jews developed sophisticated concepts of legal fictions and they used similar concepts and terminology).

⁶⁹ Larissa Bonfante, “Etruscan Inscriptions and Etruscan Religion,” in *Religion of the Etruscans*, 15–16, 22–23; Giulio M. Facchetti, *Frammenti Di Diritto Privato Etrusco* (ed. Leo S. Olschki; Firenze: Bibliotheca del Atchivum Romanicum, 2000), 7, 101. Facchetti’s findings are discussed in Koen Wylin, “The first chapter of the Cortona inscription,” *Etruscan News* 5 (2006), 6–7. The Hittites too were extraordinarily legalistic and were obsessed with sacred ritual. Singer, *Prayers*, 5; Barker and Rasmussen, *Etruscans*, 92.

⁷⁰ Giuliano Bonfante and Larissa Bonfante, *The Etruscan Language: An Introduction, Revised Issue* (Manchester University Press, 2002), 114–16; Yaron, “Ulpian,” 16.

ancient peoples.⁷¹ Roman writers ascribed Rome's military success to Roman religious reverence and observance.⁷² Roman ideology maintained that solely by defending sacred treaties with allies, Rome had unwittingly conquered the world.⁷³

Moreover, religion played an enormously important role in the development of Roman law because the priests of the pontifical college (of Etruscan origin) held a virtual monopoly on interpreting the law.⁷⁴ That the priests were its interpreters gave the law sacredness. And, since legal interpretation was based upon the national religion, the law was insulated from foreign influence. Legal development came through interpretation of the old and internal, not innovation from the new and external.

The fact that Near Eastern sacred legal forms took hold in north-central Italy but not in Greece or Egypt⁷⁵ raises the question of how those forms reached Italy, so-to-speak by land (via Greece) or by sea (directly from the Near East). In contrast to many other areas, Roman law was

⁷¹ Livy 5.1.6; Barker and Rasmussen, *Etruscans*, 91–93; W. Jeffrey Tatum, “Preface,” in *Religion of the Etruscans*, xi; Simon, “Harmony,” 46; Alan Watson, *The Spirit of Roman Law* (Athens/London: University of Georgia Press, 1995), 51.

⁷² Propertius 3.22.21 (“not military might but religious observance”); John A. North, “Conservatism and Change in Roman Religion,” *Papers of the British School at Rome* 44 (1976): 12 (Religiosity viewed “as a great source of Roman strength, even as the origin of their power and success”); Greg Woolf, *Rome: An Empire's Story* (New York: Oxford University Press, 2012), 41 (“Rome's comparative advantage” was “institutional”).

⁷³ Elias J. Bickerman, “Bellum Philippicum: Some Roman and Greek Views Concerning the Causes of the Second Macedonian War,” *CP* 40:3 (1945): 146; Alan Watson, *International Law in Archaic Rome* (Baltimore and London: Johns Hopkins University Press, 1993), 27–28, 64, 69; Eric Adler, “Who's Anti-Roman? Sallust and Pompeius Trogus on Mithridates,” *CJ* 101:4 (2006): 383–407.

⁷⁴ Alan Watson, *International*, xiii, 64–67; Idem, “From Legal Transplants to Legal Formants,” *American Journal of Comparative Law*, 43:3 (1995) 471–72; Gary Forsythe, *A Critical History of Early Rome: From Prehistory to the First Punic War* (Berkeley: University of California Press, 2005), 139; Ronald T. Ridley, “The Absent Pontifex Maximus,” *Zeitschrift für Alte Geschichte* 54:3 (2005): 277; C. J. Smith, *The Roman Clan: The Gens from Ancient Ideology to Modern Anthropology* (Cambridge: Cambridge University Press, 2006), 261 & n. 30; Cicero, *Leg.* 2.47.

⁷⁵ Weinfeld, “Anatolia,” 135–39; Morschauser, “Oath,” 93–103.

little influenced by Greek law.⁷⁶ And, since these Near Eastern sacred legal forms, did not take hold in Greek culture, it is difficult to see how the Romans could have received its sacred legal forms from the Greeks. Rather, it appears that in large measure the Romans received these forms from the Near East, or more precisely, from the Etruscans, who received them in some combination from the Near East, the Phoenicians, and Carthaginians. Carthage was a Phoenician colony, and the Carthaginians and Etruscans were traditional allies attempting to control the trade in the Western Mediterranean against Greek incursions.

In 1964, Massimo Pollitano discovered the Pygri Tablets, a bilingual Etruscan-Phoenician temple dedication on gold sheets by the king of Etruscan Caere in roughly 500 for a temple in the harbor to Etruscan Uni (queen consort) and her Phoenician rough equivalent, the premier Canaanite goddess, Astarte (Asherah, Ishtar). This was tangible proof that Astarte was being worshipped by large numbers of people a mere 40 miles from Rome, supporting earlier hypotheses of curious analogies between Roman and Semitic worship with Caere the point of contact⁷⁷ It also indicates that, at least in this instance, the Near Eastern religious influence on Etruria/Rome came directly, and undiluted by over land transmission, from the Near East by sea.

SACRED LEGAL FORMALISM: PUNCTILIOUSNESS

Hittite, Roman and Jewish sacred law were similar in their use of punctilious formalism. Sacred legal formalism was a system of legal creation by performance of sacred rituals, in which the form was absolutely crucial, while intent, *religio anime*, in the sense of undisclosed secret intention, was irrelevant. Simon Price notes the “common tendency of searching for the anachronistic, Christian value of *religio animi* and of assuming that it is the feelings of

⁷⁶ Alan Watson, *Legal Transplants: An Approach to Comparative Law* (Athens: University of Georgia Press, 1993), 27.

⁷⁷ Granger, “Wissowa,” 428–30 (1902).

individuals that provide the sole test of significance for the ritual.”⁷⁸ But, as a matter of history formalism and *religio anime* have existed together since the earliest times and continue to do so, and there are innumerable variations (in the Talmud, for example) where formalism or *religio anime* is or is not required in some measure. The distinction that *religio anime* was later and better while formalism was earlier and worse is unhistorical and wrong, much like the fallacious talion/composition paradigm.⁷⁹ The reason that the law of contract has often favored formalism over *religio anime* or intention is because of strong suspicions that testimonials of *religio anime* or intention are frequently untruthful, and in any event unverifiable.⁸⁰

The *stipulatio*, which is the crown jewel of Roman jurisprudence, is precisely in the formal mode.⁸¹ Mostly famously, “The content of the promise was judged only by the words used, and until exceptionally late in the development of the law, the covenant would remain valid and effective even if the promise was induced by fraud, extorted by fear, or proceeded on an

⁷⁸ Price, “Between Man and God: Sacrifice in the Roman Imperial Cult,” *JRS* 70 (1980): 29.

⁷⁹ Over hundreds of years, Christian, particularly German, scholars sought to denigrate Judaism via fallacious histories. The classic example was the talion/composition paradigm, which dominated German scholarship, opposing supposed Jewish eye-for-an-eye with Christian love and mercy. James Q. Whitman, “Ancient Rights and Wrongs: At the Origin of Law and the State: Supervision of Violence, Mutilation of Bodies, or Setting of Prices?,” *Chicago Kent Law Review* 71 (1995): 41–84.

⁸⁰ Experience shows that, given the opportunity, people will exhibit limitless guile, gall, and ingenuity in coming up with reasons to get out of contracts they made or to impose contracts on others where none existed. The dislike of “parol evidence” has led to the continued adherence to principles of legal formalism in the law of contract to this day. Joseph M. Perillo, “The Origins of the Objective Theory of Contract Formation and Interpretation,” *Fordham Law Review* 69 (2000): 427–77; *Storer v. Manchester City Council* (1974) 1 W.L.R. 1403 (C.A. 1974) (Lord Denning: “intention is to be found only in the outward expression”); *Hotchkiss v. National City Bank*, 200 F. 287 (S.D.N.Y. 1911) (Learned Hand: “A contract has, strictly speaking, nothing to do with the personal, or individual intent of the parties;” if “it were proved by twenty bishops that either party, when he used the words, intended something else than the usual meaning which the law imposes upon them, he would still be held”).

⁸¹ A. M. Pritchard, *Leage’s Roman Private Law* (London: Macmillan, 1961), 332–33; Alan Watson, “The Evolution of Law: The Roman System of Contracts,” *Law and History Review*, 2:1 (1984), 8, 26.

error.”⁸² “The precise word was the sovereign talisman, and every slip was fatal.”⁸³ In rabbinic jurisprudence of the same period, *taluhu vezavin; zevinei zevini* (even if he was strung up, hanging from a tree when he said it (the acceptance), if he said it, there was a deal, the contract acceptance was not rebuttable).⁸⁴ The sacred legal form was purely forensic⁸⁵ meaning for purposes of legal certainty and proof. Furthermore, the reason punctilious performance of the exact form was so important was because only the exact words and actions were self-executing performative utterances.

In Matthew 27:24–25, the reason the crowd do not make a pact/covenant with Pilate is because there is not punctilious precise correspondence between Pilate’s offer and the crowd’s acceptance. But, there is the required correspondence between Jesus’ offer of his blood at the Last Supper and the crowd’s acceptance of Jesus’ blood on the same day.⁸⁶ Explicitly, Pilate’s offer is between him and the crowd/*ochlos*; the acceptance is between the entire people/nation/*laos* and Jesus.

In Hittite ritual tradition, there was no threshold of materiality for the punctilious performance of rituals. Even a hair in the holy water invalidated the entire ritual and warranted the death of the offender who let it happen.⁸⁷ Similarly, in the *instauratio* of animal sacrifices, the Romans would proudly repeat ceremonies *ad infinitum* until the performance was entirely

⁸² Watson, “Evolution,” 4, 8.

⁸³ *Wood v. Lucy, Lady Duff Gordon*, 222 N.Y. 88, 91, 118 (1917) (Cardozo).

⁸⁴ *B. Bat.* 47b–48a; to the same effect Cicero *Off.*, 1.10–13, 3.14–15; Daniel Friedmann, *To Kill and Take Possession: Law, Morality, and Society in Biblical Stories* (Peabody, Mass.: Hendrickson Publishers, 2002), 23, 55–58, 66–67.

⁸⁵ Moshe Weinfeld, “The Covenant Grant in the Old Testament and the Ancient Near East,” *JAOS* 90:2 (1970): 192; Weinfeld, *Deuteronomy*, 101.

⁸⁶ LaCocque, *Central*, 234.

⁸⁷ “Instructions for Palace Personnel to Insure the King’s Purity,” *ANET*, 207.

free from defect, no matter how minute.⁸⁸ The Romans exhibited an “almost neurotic adherence to the words to be recited,” their precise order, “the exact pronunciation of each sound;” they would “not tolerate even the slightest deviation.”⁸⁹ Thus, Roman sacred law was extraordinarily, almost obsessive-compulsively,⁹⁰ punctilious, formulaic, formalistic, ritualistic, and detail-oriented, depending “upon a strict adherence to the prescribed sequence of action and words.”⁹¹

Perhaps the most extreme example of Roman legal punctiliousness is the (somewhat tongue-in-cheek) account of the Battle of the Caudine Forks.⁹² A Roman army attacking the Samnites became trapped in a ravine. To extricate himself and his troops, the Roman general made a treaty with the Samnites, which the Roman people subsequently refused to ratify. Employing the principle of noxal surrender (of Near Eastern origin), in purported full satisfaction of Rome’s obligations, Rome handed over the general, who had made the treaty, to the Samnites. Under Roman law, once delivered to the Samnites, the general ceased to be a Roman citizen and became a Samnite. The general, now a Samnite, knelt in the groin the Roman sacred fetial

⁸⁸ Richard Gordon, “From Republic to Principate: priesthood, religion and ideology,” in *Pagan Priests: Religion and Power in the Ancient World* (eds. Mary Beard and John North; Ithaca: Cornell University Press, 1990), 193.

⁸⁹ Tamas Notari, “Comments on the Origin of the Legis Actio Sacramento in Rem,” *Acta Juridica Hungarica* 47:2 (2006): 134–35, 147.

⁹⁰ Jenő Szmodis, *The Reality of the Law—From the Etruscan Religion to the Postmodern Theories of Law* (ed. Kaivosz; Budapest: 2005); Idem, “On Law, History and Philosophy,” *Sectio Juridica et Politica* 29:1 (2011) 119–40; Idem, “On Law as a Multidisciplinary Phenomenon,” contends that ancient Roman law grew out of obsessive-compulsive Etruscan religion.

⁹¹ Geoffrey MacCormack, “Formalism, Symbolism and Magic in Early Roman Law,” *Tidschrift voor Rechtsgeschiedenis* 37 (1969): 439, 441, 446–47, 456 (“there is no necessary connection between a primitive legal system and formalism;” “the more primitive the legal system, the less likely it is to be formalistic;” “formalism is an advanced rather than a primitive legal technique” demanding considerable skill and requiring advanced forethought to bring a claim within the scope of a recognized framework).

⁹² Livy, *Hist.* 9.5–12; William L. Carey, “Nullus Videtur Dolo Facere: The Roman Seizure of Sardinia in 237 B.C.,” *CP* 91:3 (1996): 215–16 & n.56; Thomas Wiedemann, “The Festiales: A Reconsideration,” *CQ* 36:2 (1986), 489–90.

envoy, who had delivered him (violating the sacred fetial law). Upon this *casus belli* by a “Samnite,” the Romans renewed hostilities and defeated the Samnites.

A MONOPOLY ON RELIGIOUS KNOWLEDGE

Since these punctilious rituals were complicated, varied, and involved, and the slightest deviation of any kind from scrupulously correct performance would destroy their efficacy, knowledge of the ritual steps and requirements was crucial. Compounding this, in Etruscan and Hittite religion, peace and well being on earth depended upon peace and well being in the heavens, with imbalances, *ira deorum*, in the heavens having to be corrected by earthly ritual actions, such as appropriate sacrifices to restore *pax deorum* and correspondingly peace-on-earth.

However, following Etruscan practice, though vital for the well being of the populace, Roman sacred legal knowledge was kept secret within the noble class and passed down within elite families.⁹³ “They alone possessed the knowledge of the *indigitamenta*, the proper and precise formula with which the gods could be approached.”⁹⁴ Following Etruscan practice, from the beginning in early Rome, the most enduring patrician privileges were religious. The patrician clans enjoyed exclusive rights to fill the principal sacred offices, and thus to control the religious and political life of the state.⁹⁵ In this way, the Etruscan and then the Roman upper class maintained control of society through a bond between religious and public affairs.⁹⁶

⁹³ Hilary Becker, “The Economic Agency of the Etruscan Temple,” in *Votives*, 93–94 (“in Etruria some cults that appear to serve the whole city-state were in reality dominated by a single family”); L. B. Van Der Meer, *Etrusco Ritu: Case Studies in Etruscan Ritual Behavior* (Louvain/Walpole, MA: Peeters, 2011), 133–34; Henrichs, “Hieroi,” 207–08.

⁹⁴ Szemler, “Religio,” 106.

⁹⁵ T. J. Cornell, *The Beginnings of Rome: Italy and Rome from the Bronze Age to the Punic Wars (c. 1000-264 BC)* (London and New York: Routledge, 1995), 245, 252; 260 (“The patriciate was essentially a class defined by religious prerogative”); Szemler, “Religio,” 113.

⁹⁶ Szemler, “Religio,” 108; John A. North, “Sacrifice and Ritual: Rome,” in *Civilizations of the Ancient Mediterranean: Greece and Rome* (3 vols.; eds. Michael Grant and Rachel Kitzinger; New York: Charles Scribner’s Sons, 1988), 2:981 (“In early Rome, ritual action preceded and

In the earliest historical times, the Etruscans were by far the most literate people in Italy, and, similar to Judaism, in Etruscan religion there was a strong connection between religion and writing.⁹⁷ Massimo Pallottino remarked, “we could well call the Etruscans, like the Hebrews, the ‘People of the Book.’”⁹⁸ And, like the Jews, the Etruscans had a revealed religion, principally from their aged-child-god, Tages. The Etruscans had their *Etrusca Disciplina* and the Sibylline Books, which the Romans continued to use.

Moreover, to a remarkable extent, like the Jews, Rome had a “received” law in the form of a purportedly remarkably early, large volume of heavily sacred⁹⁹ legislation, chiefly associated with Numa, in the regal period of greatest Etruscan influence.¹⁰⁰ This law seemingly set in place enduring trends of distinct legal relationships of control and domination, such as the relationship of patron and clients, and the *vita necisque potestas*, the power of life and death authority of the *pater familias*, which Yaron and Westbrook traced back to the ancient Near East, and Westbrook suggests on account of the *adrogatio* (an ancient highly formal sacred-adoption form) came to Rome from Etruria.¹⁰¹

accompanied all everyday public and private events”); Mary Beard, John North, and Simon Price, *Roman Religions* (2 vols.; Cambridge: Cambridge University Press, 1998), 1:26–28 (priest politicians), 30 (close convergence religion and politics), 43.

⁹⁷ Gary Forsythe, *A Critical History of Early Rome: From Prehistory to the First Punic War* (Berkeley: University of California Press, 2005), 52–53; Turfa, *Brontosopic*, 133.

⁹⁸ Bonfante, “Etruscan Inscriptions,” 21–23 (“Etruscan religion provides a striking example of the symbolic religious significance of writing”); Henrichs, “‘Hieroi,’” 215, 240 (far less connection between religion and writing in Greek religion).

⁹⁹ According to Alan Watson, *Legal Origins and Legal Change* (London: Humbledon Press, 1991), 113, archaic Roman private law was essentially sacred law, and legislation was passed through a sacred court/assembly, the *comitia curiata*.

¹⁰⁰ Alan Watson, “Roman Private Law and the *Leges Regiae*,” *JRS* 62 (1972): 100–105; Watson, *Origins*, 114; Hooker, “Numa,” 87–132.

¹⁰¹ Tracing back to Hittite law, the Hittite-Egyptian El-Amarna correspondence, and Assyrian sources. Raymond Westbrook, “*Vitae Necisque Potestas*,” *Historia* 49 (1999): 209–11, 217–20; Yaron, “*Vitae*,” 243–51; Anders Lisdorf, “The Conflict over Cicero’s House: An Analysis of the

RIGID CONSERVATISM COMBINED WITH NIMBLE FLEXIBILITY

Both Roman and Jewish religious and legal cultures exhibited the most extreme conservatism, venerating ancestral customs and rituals, which once adopted were seemingly carried forward forever and never abandoned. Yet, while Roman and Jewish religion and religious-based laws seem to present a completely rigid, ossified, unchangeable regime of the most conservative sort, the Romans and Jews were surprisingly nimble, capable of making enormous changes without doing violence to the framework of their systems.

Unlike their Greek counterparts, the Roman priests and Jewish sages had a high authority, not only in relations to their community, but also in relations to their gods/God.¹⁰² And, the Greeks had nothing to correspond to the Roman *auspicia* or *imperium* or the Roman and Jewish centralized control of religion.¹⁰³

The Greek formulae of religious authority involved an appeal to the power of God. “N is baptized in the name of;” “May God forgive thy sins.” The Roman formula was, “I baptize thee in the name of;” “I absolve thee in the name of.”¹⁰⁴ In the Greek formula, God took the action, in the Roman formula, the priest took the action by the power vested in him, a legalistic but “momentous difference.”¹⁰⁵

Ritual Elements in *De Domo Sua*,” *Numen* 52:4 (2005): 451–52, 455; *Ber.* 10a5 & n. 60 (interpreting the formula of 2 Kings 20:1 and Isaiah 38:1).

¹⁰² North, “Conservatism,” 5.

¹⁰³ Arthur Darby Nock, “A Feature of Roman Religion,” *HTR* 32:1 (1939): 92–93; Henrichs, “Hieroi,” 211.

¹⁰⁴ *Ibid.*, 95–96.

¹⁰⁵ *Ibid.* This difference can perhaps be found in the Etruscan *inscrizione parlante* (talking inscriptions) in which inscribed inanimate objects speak in the first person, “I belong to N;” “I was given by N,” rather than the ordinary simple third-person references, “property of;” “donated by.” Enrico Benelli, *Insrizioni etrusche: leggerle e capirle* (Ancona: SACI edizione, 2007), 121, 184, 193–96; Van Der Meer, *Ritu*, 103.

Also of note, in both the Jewish and Roman systems at roughly the same time two great competing schools developed that debated legal issues often involving what might seem the most abstruse, arcane, legalistic minutia: Hillel and the Pharisees versus Shammai and the Sadducees in Jewish law and Labeo and the Proculians versus Capito and the Sabinians in Roman law.¹⁰⁶ Alan Watson finds “extremely puzzling” the importance Roman law attached to the opinions of such unpaid expert jurists who held no official position and whose opinions often conflicted.¹⁰⁷ Roman and Jewish law thrived on disagreement.

In Roman and Jewish traditions (but not in Greek), religion and law could be altered through human religious authority.¹⁰⁸ The classic example in Roman history is that at its nadir, threatened by Hannibal, Rome made a covenant with Jupiter to dedicate for sacrifice every animal born from the flocks and herds during a year ten years hence, if Jupiter/the gods would see to it that Rome survived until then (Livy 22.9–10).¹⁰⁹

Making such a national covenant with a god/gods/God is remarkable. But, more remarkable still, the Romans reversed their principle of *instauratio* that required that sacrifices be without defect. They dictated in their divine covenant specific changes that shifted the risk of contractual ineffectiveness by reason of errors or irregularities that they made from themselves to the gods (wrong method of sacrifice, wrong date, unqualified sacrifice, lost or stolen sacrificial

¹⁰⁶ Solomon Zeitlin, “The Halaka: Introduction to Tannaitic Jurisprudence,” *JQR*, New Series 39:1 (1948): 32; Peter Stein, “The Two Schools of Jurists in the Early Roman Principate,” *Cambridge Law Journal* 31:1 (1972): 8–31.

¹⁰⁷ Alan Watson, “Roman Law,” in *Civilizations*, 1:609. The same might be said of the Talmudic sages.

¹⁰⁸ “The Sages have the power to uproot biblical law if they deem it necessary.” *Yev.* 89b5 n. 41; 90a2 & n. 15; 90a4.

¹⁰⁹ National covenants with God (or gods) are not an inherent part of religion and at the present time are unique to Judaism and Christianity. Weinfeld, “Covenant.”

animals), something that was completely otherwise contrary to and inconsistent with Roman law and religion.¹¹⁰

Likewise, the rabbinic sages were no less capable, for example, in abrogating the Numbers 5:14-31 *sotah* ordeal and the Deuteronomy 21:1-9 *eglah arufah* hand washing rite. This bold flexibility to innovate may be seen by Christian critics as unacceptable.¹¹¹ There was no Greek parallel for either the Roman *instauratio*, extreme conservatism, nor in the ability when necessary to institute overrides and changes.¹¹² Greek regulation of religion consisted mainly of prohibitions and imputations of guilt, while Roman religion also provided for permissions and dispensations.¹¹³ In their rituals and formalism the Romans, Jews, and Hittites were similar to each other and different from Greek culture.¹¹⁴

ETRUSCAN INFLUENCE ON AUGUSTUS' IMPERIAL CULT

What made Augustus' imperial cult different from the so-called Greek ruler cults was that it was based upon Etruscan religion and culture, especially through the writings of Virgil. And, singularly, Virgil was the pagan writer closest to Christianity.¹¹⁵ Etruscan religious

¹¹⁰ Rose, *Religion*, 233.

¹¹¹ North, "Conservation," 8.

¹¹² Nock, "Feature," 87–88.

¹¹³ Nock, "Feature," 87.

¹¹⁴ Nock, "Feature," 88 n. 30. See also Martin S. Jaffee, "The Taqqanah in Tannaitic Literature: Jurisprudence and the Construction of Rabbinic Memory, *JJS* 41:2 (1990): 204–25 & n. 9.

¹¹⁵ Helmut Koester, "The Memory of Jesus' Death and the Worship of the Risen Lord," *HTR* 91:4 (1998): 336–37 and n. 3, 341, 349; Idem., "Jesus the Victim," *JBL* 111:1 (1992): 10–13; Norman W. DeWitt, "Vergil and Epicureanism," *CW* 25:12 (1932): 95 ("prophetic form," "hardly less than the Bible;" "savior king;" "the *Aeneid* finds its nearest relative in the New Testament;" "Vergil became the prophet of the gentiles"); T. S. Eliot, "Vergil and the Christian World," *Sewanee Review* 61:1 (1953): 13 ("uniquely near to Christianity"); Philip Hardie, *The Last Trojan Hero: A Cultural History of Virgil's 'Aeneid'* (London/New York: I. B. Tauris, 2014), 127–36, 143–47; John O'Meara, "Virgil and Augustine: The *Aeneid* in the *Confessions*," *Maynooth Review* 13 (1988): 30–43; N. A. Mashkin, "Eschatology and Messianism in the Final Period of the Roman Republic," *Philosophy and Phenomenological Research* 10:2 (1948): 213 (Etruscan religious influence), 219, 226–28 (Bruno Bauer). And, Virgil was but the culmination

tradition provided the messianic prophecy, a boy-child shall be born, whose birth shall usher in a new golden enlightened age for the whole world, uniting peoples and fulfilling a sacred destiny, with an emphasis on individual immortality, and afterlife reward for the righteous and punishment for sinners.¹¹⁶ The golden age officially began with the *carmen saeculares* of 17 BCE, and then Augustus' imperial cult officially began with the *ludi saeculares* of 13.¹¹⁷ And, in 7, Augustus centered his new religion around the Lares and Penates, the (Teraphim-like¹¹⁸) household gods that Aeneas supposedly brought from Troy.

An interesting feature of Augustus' early cult was that it combined Augustus and Roma. This perhaps came from the Etruscan tradition of exhibiting the Capitoline triad of gods, Jupiter, Hera, and Minerva, with Jupiter slightly turned towards his wife. Josephus, *JW* 1.21 (414), compared the colossal statues of Augustus and Roma that Herod had placed in the temple at Caesarea to statues of Zeus and Hera, in their respective temples. The showing of the emperor with a consort who represented the totality of the Roman people, in Jewish eyes would have evoked the Jewish tradition of God as the husband and the Jewish people as his wife (most famously as formulated in Jeremiah). Price suggests that the motif of Augustus and Roma,

of a tradition found much earlier in Ennius, that Rome's sacred destiny would be realized in the arrival of a new Romulus, a divinely brought-about, most-worthy leader, who will bring to fulfillment Rome's prophesized divinely-ordained destiny. For example, Ennius, *Annals*, 63–64 (“One there will be whom you shall raise up to the blue precincts of the sky”), 114–15 (who “will live from age-to-age with the gods that gave him birth”), 116 (“worshipped”), 117 (“who brought us forth into the world of light”). Moreover, Virgil's *Aeneid* uses Homer's story as its predecessor foundation narrative in the same way as later the NT would use the Hebrew Bible. Georg Nicholas Knauer, “Virgil's ‘Aeneid’ and Homer,” *Greek, Roman, and Byzantine Studies* 5:2 (1964): 82 and n. 5.

¹¹⁶ Allen Brent, *The Imperial Cult and the Development of Church Order: Paganism and Christianity Before the Age of Cyprian* (Leiden: Brill, 1999), 53–58, 62–63, 72; Virgil, *Aen.* 6.310–901.

¹¹⁷ Brent, *Cult*, 17.

¹¹⁸ “Teraphim,” *EncJur* (1906).

rather than of just of Augustus, may have been less offensive to Romans.¹¹⁹ It may well also have been less offensive to Jews because of the husband-wife covenantal motif. Certainly, through Herod, his family, and court, Augustus had access to Jewish learning and motifs (Seut. Aug. 76).

There were two reasons why the ruler cult model could not function in the imperial age. First, in the recurring Italian social and civil wars, “strongmen,” who claimed to be favored by a specific god, had proven disastrous. Sulla ruined many of the great Etruscan families, and in response to their social demotion, seeking restoration to former glories, many Etruscans supported Julius Caesar and Augustus.¹²⁰

Moreover, since there were many possible patron gods, “strongmen” could compete by simply choosing different patron gods (Sextus Pompey as Neptune, for example); there were insufficient barriers to entry. And, anyway, the role of military strongman was not Octavian’s forte.¹²¹ He tolerated no further individual cults.¹²² Likewise, all victories were his, whether or not he had been present at the battle—largely eliminating the triumph. And, differentiating him, his cult uniquely celebrated Augustus’ birthday.¹²³

¹¹⁹ S. R. F. Price, *Rituals and Power: The Roman Imperial Cult in Asia Minor* (Cambridge: Cambridge University Press, 1984), 127–29 (Augustus’ “Roma became essentially a new creation”).

¹²⁰ Mario Torelli, “History: Land and People,” in *Etruscan Life and Afterlife: A Handbook of Etruscan Studies* (ed. Larissa Bonfante; Detroit: Wayne State University Press, 1986), 61–63.

¹²¹ Marleen B. Flory, “A Note on Octavian’s Felicitus,” *Reinishes Museum für Philologie*, Neue Folge 135:3/4 (1992): 283–89.

¹²² Price, *Rituals*, 49.

¹²³ *Ibid.*, 58.

Secondly, in Rome, the Greek gods were a liability. Unlike Greek theater, Roman theater was unequivocally frivolous, disrespectful, and offensive.¹²⁴ The Romans adored satirical mime and pantomime, the favorite subject of which was the sexual antics of the gods and humans.¹²⁵ Greek attempts to allegorize their myths could not remedy the problem.¹²⁶ Roman literature was Callimachean—allusive, not allegorical.¹²⁷

When Antony and Octavian were fighting for rule of the world, in the ruler cult mode, Antony was Dionysus (Osiris) and Octavian was Apollo. Had Antony, like Ptolemy, been Horus, he might have avoided the negative onslaught, but married to Isis (Cleopatra), his patron deity had to be Osiris/Dionysus. And, Octavian took full advantage.

Octavian's court poets made allusions to the Greek myth of Dionysus offering anal sex to a human, and when he died, Dionysus satisfying himself with a fig branch.¹²⁸ Ovid in his *Metamorphosis*, alluded to Dionysus' sex with a tree, depicting Apollo (read Augustus) making love to Daphne as she changes into a tree.¹²⁹

¹²⁴ William S. Anderson, "The Roman Transformation of Greek Domestic Comedy," *CW* 88:3 (1995): 171–80; Cicero, *Pro Sesto* 118; Shadi Bartsch, *Actors in the Audience: Theatricality and Doublespeak: From Nero to Hadrian* (Cambridge: Harvard University Press, 1994), 63–97.

¹²⁵ R. W. Reynolds, "The Adultery Mime," *CQ* 40:3/4 (1946) 77–84; Idem, "Criticism of Individuals in Roman Popular Comedy," *CQ* 37:1/2 (1943): 37–45.

¹²⁶ Philip Sellev, "Achilles or Christ? Porphyry and Didymus in Debate over Allegorical Interpretation," *HTR* 82:1 (1989): 79–100; Ilaria L.E. Ramelli, "The Philosophical Stance of Allegory in Stoicism and its Reception in Platonism, Pagan and Christian: Origen in Dialogue with the Stoics and Plato," *International Journal of the Christian Tradition* 18:3 (2011): 98–130; John Tate, "On the History of Allegorism," *CQ*, 28:2 (1934): 105–114; Idem, "The Beginnings of Greek Allegory," *Classical Review* 41:6 (1927): 214–15.

¹²⁷ Anne Gosling, "Political Apollo: From Callimachus to the Augustans," *Mnemosyne*, Fourth Series 45:4 (1992): 501–12.

¹²⁸ Hyginus, *Astronomy* 2.5; Eric Csapo, "Riding the Phallus for Dionysus: Iconology, Ritual, and Gender-Role De/Construction," *Phoenix* 51:3/4 (1997): 253–95. In Horace, *Sat.* 1.8.1, 46, Dionysos' son, Priapus was formed from a fig tree and delivered by Dionysos—"from my cleft bum fig tree I let a thunderous fart."

¹²⁹ *Met.* 1.553–67; Barbara E. Stirrup, "Techniques of Rape: Variety of Wit in Ovid's *Metamorphosis*," *GR*, Second Series 24:2 (1977): 170–84; Gosling, "Apollo," 504.

The myth of Dionysus and the fig (I believe) was alluded to in mime in Mark's story of the cursing of the fig tree (11:12–14).¹³⁰ And, Justin Martyr, *I Apol.* 25, wrote of Dionysus and Apollo engaging in sexual activities with men too shameful to even mention.¹³¹ But, not too shameful for Clement of Alexandria, *Protr.* 2.34.3–5. Nor Arnobius, *Ad Gent.* 5.28, who described in detail how Dionysus copulated with the fig. Indeed, there was an important genre of Christians opposing paganism by recounting the sexual antics of the gods—Christian porn, if you will.¹³² Christian Nonnus' *Dionysiaca* 25:429–50, in a parody of Achilles' shield in Homer and Aeneas' shield in *Vigil*, depicts Dionysus conquering India bearing a shield emblazoned with Zeus and Ganymede.

Augustus increasingly styled himself as pious Aeneas. Augustus acquired seven individual priesthoods culminating in 12 with the prized position of *pontifex maximus*.¹³³ He and his associates developed a “completely new pictorial vocabulary,” not based on Greek mythology, with ruler iconography off limits. Animated, arrogant power and self-glorification were replaced by modest, humble, dignified religious devotion. The tousled hair of Octavian youthful man-of-action was replaced by studied curls of the calm, ageless man-of-peace. Greek

¹³⁰ This is a subject on which biblical scholars refuse to recognize what classicists have recognized. See William R. Telford, “More Fruit on the Withered Tree: Temple and Fig-Tree from a Greco-Roman Perspective,” in *Templum Amicitiae: Essays on the Second Temple Presented to Ernst Bammel* (Sheffield: Sheffield Academic Press, 1991), 264–304.

¹³¹ Pausanias, *Descr.* 2.37.5 declines to elaborate.

¹³² Apology of Aristedes 8–11; Tertullian, *Apol.* 11, 14–15; Justin Martyr, *I Apol.* 21; Arnobius, *Ad. Gent.* 5; Prudentius, *Crowns of Martyrs* 10.215–35; Robert Levine, “Prudentius’ Romanus: The Rhetorician as Hero, Martyr, Satirist, and Saint,” *Rhetorica* 91:1 (1991): 5–38; Richard Bauckham, “The Fall of the Angels as the Source of Philosophy in Hermias and Clement of Alexandria,” *VC* 39:4 (1985): 313–30. Interestingly, the fallen angels of Christian tradition were tied to their having had sex with human women, which was tied to the development of the pagan gods.

¹³³ Ridley, “Absent,” 275–300, especially 284–91.

nudity was replaced by a surfeit of undulating clothes.¹³⁴ Though distinctively Roman, and alien in Greek culture, overwhelmingly, in astonishing numbers, Augustus was portrayed as the *pontifex maximus*, *togatus capite velato*, his head covered by his toga (togas are of Etruscan origin),¹³⁵ *patera* (shallow sacrificial bowl) in his right hand (common Etruscan symbolism), offering sacrifice by tipping the bowl pouring the sacrificial liquid. Appearing on innumerable coins, in iconography, the emperor became the only person to perform sacrifice, monopolizing the key rite of the cult.¹³⁶

The Etruscans' status was elevated. Although the Aeneas legend was apparently Etruscan before it was Roman,¹³⁷ traditionally, Romans regarded Etruscans as foreigners, unlike themselves and their fellow Latins.¹³⁸ In Roman Aeneas legends, the Etruscans had been bit players or adversaries, not part of the Trojan coalition.¹³⁹ But, in Virgil, the Etruscans were key Trojan allies. Indeed, in Virgil, the Trojans were originally Etruscans from Italy!, who emigrated to Troy, so that when, after the fall of Troy, Aeneas and his Trojans travel to Italy, they return to

¹³⁴ Paul Zanker, *The Power of Images in the Age of Augustus* (trans. Alan Shapiro; University of Michigan Press, 1990), 101 and 85, 96–99, 111.

¹³⁵ On Etruscans using *capite velato*, Fay Glinister, “Veiled and Unveiled: Uncovering Roman Influence in Hellenistic Italy,” in *Votives, Places and Rituals in Etruscan Religion: Studies in Honor of Jean MacIntosh Turfa* (eds. Margarita Gelba and Hilary Becker; Leiden/Boston: Brill, 2009), 193–213.

¹³⁶ Beard, North, and Price, *Religion*, 1:350 (“distinctively Roman model of sacrifice became a familiar image almost everywhere”); Zanker, *Images*, 126–28 (“alien;” “brilliant choice”).

¹³⁷ John F. Hall, “P. Vergilius Maro: Vates Etruscus,” 28 (1982): 44–50, especially 47. The key figures in Augustus' Etruscan coterie were Maecenas, Agrippa, and Virgil.

¹³⁸ Theodor Mommsen, “The earliest inhabitants of Italy: from Theodore Mommsen's History of Rome,” *Knowsley Pamphlet Collection* (1858), 59, also 52, 54, 62–63 (available JSTOR); Maria Beatrice Bittarello, “The Construction of Etruscan ‘Otherness’ in Latin Literature,” *GR* 56:2 (2009): 211–33.

¹³⁹ John F. Hall, “The Original Ending of the Aeneas Tale: Cato and the Historiographical Tradition of Aeneas,” *Syllecta Classica* 3 (1991): 13–20. The Aeneas legend in southern Etruria antedates Herodotus' account of the Etruscans. Peter Mountford, “Aeneas: An Etruscan Foundation Legend,” *ASCS 32 Proceedings* (available internet).

their ancestral home.¹⁴⁰ Tellingly, the only condition Aeneas put in the sacred treaty-covenant between the Trojans and their Italian opponents was the adoption by the Italians of the Trojan (read Etruscan) rituals and gods (*Aen.* 12.190–92).

The Etruscans and Romans believed, or at least flattered themselves, that they were from the Near East. Thus, Appius Claudius Pulcher (consul in 54 BCE) was such a passionate defender of augury that he was nicknamed the “Pisidian” (after the people of Pisidia in Asia Minor renowned for their devotion to augury).¹⁴¹ And Tacitus, *Ann.* 5.44, relates that during the reign of Tiberius, the Etruscan assembly issued a degree of kinship with the people of Sardis in Lydia, from whence the Etruscans had supposedly come.¹⁴²

CONCLUSION

Traveling across centuries and continents, without having taken hold in the lands and cultures in between, ancient Near Eastern sacred legal procedures and formulae took hold in Etruscan and Roman Italy. Undoubtedly, these traditions took as strong a hold as they did because the Etruscans, and the Romans following them, believed, or flattered themselves, that they had come from the Near East.

In response to their social demotion under Sulla, elite Etruscan families supporting Julius Caesar and Augustus began a craze for Etruscan culture, a combination of authentic archaic and nostalgically remembered traditions, that lasted through the reign of Claudius. With Augustus searching for a way to end the recurring disastrous social and civil wars, the ersatz Etruscan religion of Virgil provided the solution: a new imperial religion uniting diverse peoples, *toto*

¹⁴⁰ Robert M. Wilhelm, “Dardanus, Aeneas, Augustus and the Etruscans,” in *The Two Worlds of the Poet: New Perspectives on Vergil* (eds. Robert M. Wilhelm and Howard Jones (Detroit: Wayne State University Press, 1992), 129–45.

¹⁴¹ Beard, North, and Price, *Religion*, 1:152–53.

¹⁴² Dominique Briquel, “Etruscan Origins and Ancient Authors,” in *World*, 42.

Italia and the empire, not based upon military might but virtue, piety, and sacred eternal covenantal bonds.

Since Adolf Deissmann it has been recognized that there are surprising similarities between Christianity and the imperial cult, as though the imperial cult was somehow a precursor of Christianity. Recently, Edwin Judge has pointed out that a heavily disproportionate number of the people mentioned around Paul were Romans.¹⁴³ And, a large and prominent part of Paul's writings were directed to Christian communities in Rome and recently established imperial Roman colonies, Corinth and Philippi. Not just intellectually, but physically, there was a close connection between Christianity and Rome.

In biblical scholarship, the imperial cult has been seen as “other,” to be contested or negotiated with. And, a diversity of different “imperial cults” has been seen as reflecting local customs. However, to a large degree, Augustus' imperial cult was centrally planned and based upon a faux Etruscan religion during a period of Etruscomania that was purposely exported for propaganda purposes beyond Rome to the entire empire.

The Roman imperial cult contained the same covenantal forms found in earliest Christianity. Because, via the covenantal connection, the Roman imperial cult had much in common with Jewish tradition, intellectually there was nothing fundamentally at loggerheads between the Roman imperial cult and Christianity. They were both about (pardon the anachronism) covenantal theology. Augustus' imperial cult may have given Christianity a leg up, a boost, a platform and model of prominence and respectability, that prevented Gentile Christianity from being swamped by Hellenistic ideas and thereby losing its Jewish foundations.

¹⁴³ Judge, “The Roman Base of Paul's Mission,” *TynBul* 56:1 (2005): 103–17.

The Roman imperial cult should be seen as a force that kept Christianity Jewish, and not suffused in a miasma of Greek philosophy or mystery.

